IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.8166 of 2003

Between:

The Toddy Tappers Cooperative Society Tandur Toddy Group (Village & Mandal) Rangareddy District, rep.by its President Sri.C.Shravan Kumar Goud.

...PETITIONER

AND

1. The Superintendent of Prohibition & Excise, Rangareddy District

at Narayanaguda, Hyderabad.

2 The Inspector of Prohibition & Excise (SHO) Tandur Circle

at Tandur, Rangareddy District.

3 The Commissioner of Prohibition & Excise Govt. of AP.,

Nampally, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus directing the respondents not to insist the rentals in respect of the Toddy Group from 31/10/2002 to till reopening of the toddy group of Tandur Village and Mandal, Rangareddy District by declaring the inaction of the respondents in not allowing the petitioner society to carry on the toddy business during the subsisting of licences of Toddy Group of Tandur as illegal.

Counsel for the Petitioner: MR.B.SAI RAM GOUD

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION NO.8166 OF 2003

ORDER:

Heard Sri B.Sai Ram Goud, the learned counsel appearing for the petitioner and the learned Government Pleader for Prohibition & Excise appearing for the respondents.

The petitioner, which is a Toddy Co-operative Society, filed this Writ Petition initially on 29.04.2003 seeking for a Writ of Mandamus directing the respondents not to insist rentals in respect of toddy group from 31.10.2002 till reopening of the toddy group of Tandur Village and also declare the action of the respondents in not allowing the petitioner society for carrying on business during the subsistence of licence as illegal.

The grievance of the petitioner-Society is to the effect that it is holding group society licence bearing Nos.606, 607 and 608 in respect of the shops 1 to 3 renewed on 04.04.2002, which is valid up to 31.03.2007 and Depot Licence bearing No.2 renewed on 18.04.2002 valid up to 31.03.2003. However, on 31.10.2002 the Deputy Commissioner of Prohibition and Excise, Hyderabad Division and SDPEO concerned inspected the Toddy Shop No.1 and found the toddy was adulterated with chloral hydrate, accordingly, a crime was registered in Crime No.356/2002-03 under Section 37(a) of the A.P. Excise Act, 1968 and thereafter they inspected the

Toddy Depot and again found adulteration of the today with chloral hydrate and thereupon registered a crime in Crime No.357/2002-03. In the inspection of Shop No.2, they found that the toddy was free from chloral hydrate and they drew sample bottles under cover of panchanama. The petitioner had filed earlier Writ Petition in W.P.No.22180 of 2002 questioning the suspension orders passed upon the aforesaid findings and the same was dismissed by this Court on 07.11.2002 and on further appeal, the Division Bench of this Court as per orders in Writ Appeal No.202 of 2003, dated 07.02.2003 disposed of the same with certain directions revoking the suspension order but as on this day there is no suspension or cancellation of the orders of suspension nor any final order is passed. However, the respondents orally demanded the petitioner-Society for rentals during the period of suspension from 31.10.2002 for allowing to carry on toddy business without issuing demand notice for rentals. It is also pointed out that the report in respect of the first and second sample bottles was in favour of the petitioner and therefore, they are not liable for payment of any such rentals. Hence, the Writ Petition.

Subsequently, on a separate application filed in W.P.M.P.No.21157 of 2003, the petitioner-Society sought amendment of the prayer in the Writ Petition, whereby the writ was sought to declare the notice dated 03.07.2003 and also the consequently proceedings dated 11.07.2003 and 25.07.2003 as illegal.

According to the petitioner, after disposal of the Writ Appeal filed by it, there is a demand now for rentals from 12.11.2002 till date along with interest. The petitioner submitted representations denying its liability stating that the concerned Rule 28(2) of the A.P. Excise Act, 1968 and general conditions of Rule 69 under which such

demand was made has no application. Thereafter under the proceedings dated 11.07.2003, the respondents issued a show cause notice as to why licence should not be cancelled under Section 31(b) of the said Act for non-payment of rentals of Rs.33,74,880/- along with penal interest and also asked the petitioner to submit explanation. The petitioner-Society submitted explanation on 22.07.2003. However, the same was rejected as per the orders dated 25.07.2003 with directions to clear off the rentals until June. It is also pointed out that the petitioner-Society already paid a sum of Rs.3,75,000/- under four challans and therefore, the entire impugned demand is wholly illegal and the authorities could not have invoked Rule 28(2) of the said Rules. Hence, the amended prayer.

The amendment application was ordered by this Court on 14.08.2003. Initially, this Court granted interim directions in favour of the petitioner on 16.06.2003 as per orders in W.P.M.P.No.10601 of 2003 and subsequent to ordering of the amendment application, this Court granted interim stay in W.P.M.P.No.21949 of 2003 on 14.08.2003 subject to condition of the petitioner depositing Rs.5,00,000/-. In respect of both the interim orders, the respondents filed counter affidavit along with the vacate stay application and on their request, the main Writ Petition itself is taken upon for disposal.

In the counter affidavit filed by the respondents, it is submitted that there is no dispute in regard to the chequred events as pointed out by the petitioner. However, there is no order in favour of the petitioner as such revoking any suspension order and the review application filed by the respondents in Review Petition No.653 of 2003 is still pending. Further, it is also pointed out that having found the violation

during the inspection conducted, crimes have already been registered in Crime Nos.357/2002-03 and also 356/2002-03. There has been a confirmation of the adulteration of today by the SDPEO and therefore, necessary action has been initiated under Section 31(1) of the Act. The orders of suspension issued against the petitioner is still continued to remain in force and the petitioner has already been given a show cause notice and the explanation was already filed. As per Rule 28 of the A.P. Excise (Arrack and Toddy Licence General Conditions) Rules 1969, the petitioner is liable to pay the rentals from the date of suspension and therefore, there are no merits in the Writ Petition.

Having considered the submissions made on both the sides and on perusal of the entire material on record, the only question which arises for consideration is as to whether the petitioner is liable to pay the rentals as demanded by the respondents herein ?

There is no dispute to the fact that the premises of the petitioner in respect of which it holds licence was inspected by the Officials concerned and having found adulteration with chloral hydrate, necessary proceedings have been initiated including the registration of crimes and subsequently there has been a demand for rentals. The petitioner was already issued show cause notice and the explanation was also filed. The other submission made on behalf of the petitioner-Society is that Rule 28 of the said Rules has no application whereas a bare reading of the aforesaid Rules, it is amply made clear that notwithstanding the suspension of a licence, the licensee is liable to pay the rentals along with interest till the finalization of the action initiated against the licensee or restoration of the

licence whichever is earlier and it also bears the interest. The said Rule has undergone substitution by G.O.Ms.No.8, dated 04.01.2003. It is argued on behalf of the petitioner that it has no retrospective effect whereas it is to be seen that the petitioner has no fundamental right in respect of the Excise and it is bound by the terms and conditions of the contract as framed. The imposition in regard to the liability towards the rentals is not the first time sought to be introduced by way of any such amendment, the liability has been in existence from the date of the contract and in view of the same, it cannot be said that the petitioner is in any way exempted from such liability. It cannot be said that the Rule has no application in the facts of case more so it is only continuity of the liability. Hence, I do not find any merits in the contention urged on behalf of the petitioner and the petitioner is equally covered by the amended

Rule. The Writ Petition accordingly fails and is liable to be dismissed.

The Writ Petition is accordingly dismissed. No costs.

B. PRAKASH RAO, J

19th April 2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copy to:

1. The Superintendent of Prohibition & Excise, Rangareddy District

at Narayanaguda, Hyderabad.

2. The Inspector of Prohibition & Excise (SHO) Tandur Circle

at Tandur, Rangareddy District.

3. The Commissioner of Prohibition & Excise Govt. of AP.,

Nampally, Hyderabad.

4. Two CCs to G.P. for Prohibition and Excise, High Court Buildings, Hyderabad (OUT).

5. Two CD copies.